MOTION FILED

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No. 09-1149

In The
Supreme Court of the United States

CITY OF WARREN, MI, et al.,

Petitioners,

v.

JEFFREY MICHAEL MOLDOWAN,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* AND BRIEF *AMICUS CURIAE* OF NATIONAL FRATERNAL ORDER OF POLICE IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* OF NATIONAL FRATERNAL ORDER OF POLICE IN SUPPORT OF PETITIONERS

Now comes the National Fraternal Order of Police ("FOP"), by and through the undersigned counsel, and pursuant to Supreme Court Rule 37.2(b) respectfully moves for leave to file its *Amicus Curiae* Brief in favor of granting Petitioners' Writ of Certiorari. The FOP sought consent to file its *Amicus Curiae* Brief from the counsel of record for all parties pursuant to Supreme Court Rule 37.2(a). This Motion is necessary as Respondent Jeffrey Michael Moldowan withheld consent for the FOP to file its *Amicus Curiae* Brief. Petitioners granted the FOP written consent to file its *Amicus Curiae* Brief as required by Supreme Court Rule 37.2(a).

The Fraternal Order of Police is the world's largest organization of sworn law enforcement officers, with more than 325,000 members with more than 2,100 state and local lodges. The FOP is the voice of those who dedicate their lives to protecting and serving our communities. The FOP represents law enforcement personnel at every level of crime prevention and investigation, nationwide and internationally. The FOP is an active representative group that serves as "The Voice of Our Nation's Law Enforcement Officers." As part of their duties, police officers must investigate, gather facts, interview witnesses and suspects, examine records, and make arrests. These officers must make decisions every day

about which witnesses to interview and which leads to follow up.

It is the duty of the FOP to protect law enforcement officers and serve the good of each and every community within its reach. There is no group more qualified to speak to the issues presented in this case. It is with these interests in mind that the FOP requests this Court to grant its Motion for Leave to file its *Amicus Curiae* Brief. The Sixth Circuit's decision finding that an officer is subject to civil liability for failing to turn over evidence that is later deemed exculpatory is extremely dangerous in that the decision completely disregards an officer's good or bad faith efforts. In fact, the decision finds police officer's good faith to be completely irrelevant.

The Sixth Circuit's decision imputes the *Brady v. Maryland* standard to law enforcement. The Sixth Circuit has wrongfully extended a duty reserved for prosecutors to police officers. Moreover, this duty is extended without giving police officers the proper protection of immunity that is guaranteed to prosecutors.

The FOP requests this Honorable Court to review the impracticable and unworkable standard set by the Sixth Circuit. The issues presented are of upmost importance to law enforcement and impact the day-to-day operations of police officers.

Accordingly, the National Fraternal Order of Police respectfully requests that this Honorable Court grant its Motion for Leave to file an *Amicus Curiae*

Brief and that the Court grant the Petitioners' Writ of Certiorari.

The National Fraternal Order of Police's *Amicus Curiae* Brief is filed contemporaneously herewith as required by Supreme Court Rule 37.2(b).

Respectfully submitted,

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TABLE OF CONTENTS

		Page
I.	INTEREST OF *AMICUS*	1
	A. The National Fraternal Order of Police – More than 325,000 Men and Women of Law Enforcement Urges Reversal of the Decision of the Sixth Circuit Court of Appeals	1
	B. Key Facts	4
II.	ARGUMENTS IN SUPPORT OF PETITIONERS	8
	A. This Case Presents an Opportunity for this Honorable Court to Support Reasonable "Good Faith" Law Enforcement Efforts and Clarify the Existing "Good Faith" Standard for Qualified Immunity in the Civil Context	8
	B. This Case Presents an Opportunity for this Honorable Court to Establish a Clear Guideline Prohibiting the *Brady v. Maryland* Standard from Being Imputed to Police Officers	17
III.	CONCLUSION	19

TABLE OF AUTHORITIES

Page

CASES

Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034 (1987) 13

Arizona v. Youngblood, 488 U.S. 51, 109 S.Ct. 333 (1988) 14, 15

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194 (1963) 17, 18

Dickerson v. McClellan, 101 F.3d 1151 (6th Cir. 1996) 10

Graham v. Connor, 490 U.S. 386, 109 S.Ct. 1865 (1989) 13, 14, 15

Harlow v. Fitzgerald, 457 U.S. 800, 102 S.Ct. 2727 (1982) 9

Jean v. Collins, 221 F.3d 656 (4th Cir. 2000) 18

Moldowan v. City of Warren, 578 F.3d 351 (6th Cir. 2009) 9

Pearson v. Callahan, 129 S. Ct. 808 (2009) 10

Saucier v. Katz, 533 U.S. 194, 121 S.Ct. 2151 (2001) 10, 12, 13, 14, 15

Williams v. Mehra, 186 F.3d 685 (6th Cir. 1999) 10

CONSTITUTION

U.S. Const. amend. IV 12

TABLE OF AUTHORITIES – Continued

Page

OTHER AUTHORITIES

Moriah Balingit, *Nine Police Officers May Lose Jobs in North Versailles*, Pittsburgh Post-Gazette, Jan. 8, 2009 20

Kevin Bohn, *Police Face Cuts as Economy Falters*, Oct. 23, 2008, http://www.cnn.com/2008/CRIME/10/23/police.economy/index.html 21

Steve Brandt, *Minneapolis 2010 Budget Trims Police, Civilian Jobs: Minneapolis Adopted a 2010 Budget That Will Put 25 Officers and Recruits, and 30 Civilians, Out of Work*, Star Tribune, Dec. 7, 2009 20

Joe Guillen, *Cleveland Sends Layoff Notices to Safety Forces*, The Plain Dealer, Dec. 23, 2009 20

Mark Hornbeck and Charlie Cain, *Michigan Budget Cuts Hit Police Ranks: Revenue Sharing, 100 Trooper Jobs Among $304M in Cuts by Gov*, Detroit News Lansing Bureau, May 6, 2009 20

Robert D. McFadden, *New York Leads Big Cities in Robbery Rate, but Drops in Murders*, N.Y. Times, Aug. 11, 1991 5

Bradley Olson, *City's Budget Woes May Mean Furloughs, Layoffs: Mayor Suggests Unions Delay Raises to Help Save Jobs*, Houston Chronicle, Mar. 10, 2010 20

TABLE OF AUTHORITIES – Continued

Page

Julie Scharper, *Worst-Case City Budget Cuts Police, Fire, Recreation: Rawlings-Blake Says It Shows What Must Be Done if There Are No New Revenues*, The Baltimore Sun, Mar. 25, 2010 21

Patricia Tjaden and Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey* (2000).....5

BRIEF OF *AMICUS CURIAE* NATIONAL FRATERNAL ORDER OF POLICE

Now comes the National Fraternal Order of Police, on behalf of the more than 325,000 members of law enforcement personnel nationwide, by and through undersigned counsel, and respectfully submits its Brief in support of the Petitioners for a Writ of Certiorari.[1]

I. INTEREST OF *AMICUS*[2]

A. The National Fraternal Order of Police – More than 325,000 Men and Women of Law Enforcement Urges Reversal of the Decision of the Sixth Circuit Court of Appeals.

The National Fraternal Order of Police represents more than 325,000 law enforcement personnel at every level of crime prevention and investigation, nationwide and internationally. Significant interference with the

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[1] The office of General Counsel to the National Fraternal Order of Police authored this Brief in its entirety. There are no other entities which made monetary contribution to the preparation or submission of this Brief.

[2] This Brief is accompanied by a Motion for Leave pursuant to Supreme Court Rule 37.2(b). Counsel for Petitioners granted written consent to file this Brief. Counsel for Respondent did not give written consent, requiring the National Fraternal Order of Police to file a Motion for Leave. Counsel of record for both the Petitioners and the Respondent received timely notice of the intent of the National Fraternal Order of Police to file this Brief as required by Supreme Court Rule 37.2(a).

work of law enforcement personnel is squarely presented in this case. Simply stated, the decision of the Sixth Circuit, holding that a police officer violates the Constitution and, is in turn, liable for damages in civil ligation if he fails to provide prosecutors with any piece of evidence that a jury later determines has "apparent" exculpatory value is an extremely dangerous precedent. On that view, the officer's good or bad faith is irrelevant. Certiorari should be granted because that ruling conflicts with this Court's precedent and is the subject of a significant and widely acknowledged circuit conflict.

There is no one group more qualified to speak to the issues presented than the National Fraternal Order of Police. The FOP perspective on this issue is unique, and particularly appropriate to the substantive law enforcement issues raised within this case. Law enforcement personnel nationwide, and at an international level, work every day to promote and ensure the safety of people everywhere. It is America's law enforcement personnel who patrol the streets, protect people and their families, investigate crimes, and arrest criminals. As a part of these tasks, law enforcement personnel are engaged in many different efforts, including but not limited to investigation, witness interviews, interviews with suspected criminals, and review of substantive evidentiary matters. Law enforcement personnel may go undercover to investigate and/or infiltrate suspected crime groups. Federal, state and local police officers annually conduct hundreds of thousands of

investigations involving millions of pieces of evidence. The decision of the Sixth Circuit holding that police officers may be held liable for even innocently failing to disclose evidence that may eventually be deemed exculpatory cannot be overstated.

The undersigned counsel of record has been General Counsel for the National Fraternal Order of Police since 2001. The General Counsel for the FOP has previously served as General Counsel for the Columbus, Ohio chapter of the NAACP and the Columbus Urban League. The FOP's General Counsel has also been the Safety Director for the City of Columbus, Ohio, overseeing the day-to-day operations of the Division of Police and the Fire Department. As Safety Director and counsel to the police, the undersigned reviewed the conduct of officers as well as disciplined, discharged, defended, prosecuted, trained, and promoted officers. Police officers are required to make more critical decisions than members of any other profession. Thus, to place this burden and standard on them is ineffective.

Based on the undersigned's many years of practice and involvement with law enforcement, this decision neither improves the practices of policing, nor does it add to the protection of citizens' constitutional rights. The most troubling aspect of the Sixth Circuit's holding is that an officer's good or bad faith and intentions are not relevant. The Court did not find that the officers acted in bad faith, nor did it find that there was a pattern and/or practice of the

officers withholding evidence. This is nothing short of bad law that should be reversed.

It is with these interests in mind that the National Fraternal Order of Police and its membership respectfully request this Honorable Court to grant the Petition for a Writ of Certiorari and reverse the decision of the Sixth Circuit Court of Appeals on behalf of all officers.

B. Key Facts

The Sixth Circuit's decision adopts a standard that makes it exceptionally difficult for police officers to go about the business of police work. This decision also conflicts with Supreme Court precedent and the decisions of several other circuits. There is nothing unique about police investigations that merit deviating from the "good faith/reasonable" standard applied in other criminal matters. The facts of this case demand a fair and more reasonable application as well as a more common sense approach to police work.

The record below indicates a domestic violence situation culminating in a brutal kidnaping, rape, and assault that occurred during August 1990. The 1990s were some of the most dangerous and violent times in America. The crime rate in almost every major city, including Detroit and its surrounding cities increased drastically. Many of the crimes were

felony-related and violent.[3] As a result, there was a dramatic rise in the number of police investigations.

The victim of the underlying assault, Ms. Fournier, specifically identified Mr. Moldowan, her ex-boyfriend, as her attacker.[4] Pet. App. at 6a. The extent of the victim's injuries required officers to wait two (2) days before they could interview her. *Id.* Furthermore, the extent of injuries required the victim to write her answers down in response to written questions provided by the detectives. *Id.*

The victim gave a sworn statement that she had recently been threatened with physical harm by Mr. Moldowan and that he had beaten her in the

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[3] *See*, Robert D. McFadden, *New York Leads Big Cities in Robbery Rate, but Drops in Murders*, N.Y. Times, Aug. 11, 1991 (citing Federal Bureau of Investigation, *Uniform Crime Reports for 1990*). The author stated that according to the Federal Bureau of Investigation's Uniform Crime Report for 1990, overall violent crime increased eleven percent (11%) over 1989, with homicides and forcible rape each up 9 percent (9%) and robbery and aggravated assault each up eleven percent (11%). Among the major cities in the country, Detroit had one of the highest murder rates in the country.

[4] *See*, Patricia Tjaden and Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey* (2000). The authors point out that approximately 1.3 million women are physically assaulted by an intimate partner annually in the United States. Sixty-four percent (64%) of the women who reported being raped, physically assaulted, and/or stalked since age 18 were victimized by a current or former husband, cohabiting partner, boyfriend, or date.

past. *Id.* at 7a. She also identified the other perpetrators as friends of Mr. Moldowan, with whom she was acquainted. *Id.* The victim claimed she knew all of her abductors, all four (4) of whom were Caucasian males. *Id.* Her testimony did not change at any point throughout the initial investigation or trial.

Ms. Fournier's statements were corroborated by her sister who indicated that she had witnessed first-hand the threats and prior violent behavior of Mr. Moldowan. *Id.* The victim's sister also testified that she received a call on the day the victim was found. *Id.* at 8a. She indicated that she recognized the caller as Mr. Moldowan. *Id.* Mr. Moldowan inquired as to Ms. Fournier's location. *Id.* The victim's sister knew that Ms. Fournier was in the hospital, but lied and told Mr. Moldowan that she was at home with her. *Id.* He then exclaimed "No, no she's not . . . She's at the morgue." *Id.* The victim's sister testified further that Mr. Moldowan called her home on the previous day looking for the victim, and that Mr. Moldowan stated "that he was going to get her." *Id.*

The record also revealed the expert testimony of a Dr. Alan Warwick, D.D.S., forensic odontologist and consultant for the Wayne County Medical Examiner's Office and a consultant to Macomb County, Monroe County, and the Michigan State Police. *Id.* Dr. Warwick testified that the "chances are . . . 2.1 billion to one that another individual can make those same marks," referring to dental impressions taken from Mr. Moldowan as compared with the victim's right

arm. *Id.* at 8a-9a. His findings were conclusive that Mr. Moldowan was the victim's attacker. *Id.* at 8a.

The Respondent does not allege that the detectives or the City of Warren in any way suborned the perjury of Dr. Warwick. This information stands as independent, objective evidence known and relied upon by the detectives during their investigation and at the initial trial of Mr. Moldowan.

This evidence is restated herein to properly frame the context of law enforcement's investigation which underlies the good faith reasonableness of law enforcement's efforts. Although some potentially exculpatory evidence might not have made it to the prosecutor, there is no reason to conclude that the Sixth Circuit's rule would have led to the discovery of that evidence. If this is the rule of law it is very likely that police officers will spend more time storing and evaluating the evidence in their possession rather than devoting more time collecting additional evidence. There are real restraints on what a police officer can reasonably accomplish and, thus, they should not be held to an unrealistic standard. These are operational realities in police work that can not be ignored.

II. ARGUMENTS IN SUPPORT OF PETITIONERS

A. This Case Presents an Opportunity for this Honorable Court to Support Reasonable "Good Faith" Law Enforcement Efforts and Clarify the Existing "Good Faith" Standard for Qualified Immunity in the Civil Context.

The National Fraternal Order of Police believes the decision of the Sixth Circuit to be unwise, unworkable, and unnecessary. As discussed herein, the FOP respectfully requests this Honorable Court to grant Petitioners' Writ of Certiorari to reverse the decision of the United States Court of Appeals for the Sixth Circuit and remand this matter to the District Court for review of the qualified immunity issues using a good faith standard.

The decision of the Sixth Circuit entirely eliminates a "good faith" standard for qualified immunity in the civil liability context. Good faith is the cornerstone of the relationship between law enforcement and the public they serve and protect. We as a society ask that law enforcement assist in keeping us safe by investigating and solving crimes. We ask that the police work diligently and always do their best. We ask law enforcement to handle a full spectrum of crimes, from car accidents to assaults to robberies and premeditated murders. In all cases we ask for them to quickly solve crimes and to restore public confidence and safety. We strive to balance these police powers with public policy and interests.

The underlying purpose behind qualified immunity is to shield government officials performing discretionary functions from civil liability "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S.Ct. 2727 (1982). As acknowledged by the Sixth Circuit, "[T]he rationale underlying the qualified immunity doctrine is that 'where an official's duties legitimately require action in which clearly established rights are not implicated, the public interest may be better served by action taken with independence and without fear of consequences.'" *Moldowan v. City of Warren*, 578 F.3d 351 (6th Cir. 2009) (quoting *Harlow*, 457 U.S. at 819).

The existing legal test for evaluating claims of qualified immunity is a three-part procedure:

(1) Determine whether a constitutional violation occurred;

(2) Determine whether the right violated was a clearly established right of which a reasonable person would have known; and

(3) Determine whether the Plaintiff has alleged sufficient facts and supported the allegations by sufficient evidence to indicate that what the official did was objectively unreasonable in light of the clearly established constitutional rights.

Williams v. Mehra, 186 F.3d 685, 691 (6th Cir. 1999) (citing *Dickerson v. McClellan*, 101 F.3d 1151, 1157-58 (6th Cir. 1996)).[5]

This test serves several purposes in the law enforcement context. First, the test acknowledges a context and that "mistakes can occur." This is consistent with this Court's decision in *Saucier v. Katz*, 533 U.S. 194, 121 S.Ct. 2151 (2001):

> The qualified immunity inquiry's concern . . . is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. An officer might correctly perceive of the relevant facts, but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances.

Id. at 195. Second, it sets an appropriate standard for conduct, i.e., reasonableness, based on the context.

This is a "good faith" standard when applied to law enforcement efforts. Taken in conjunction with the case law regarding errors, omissions and negligence, it is easy to see the framework and analysis which bolstered that "good faith" requirement.

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[5] The sequence and mandatory nature of this inquiry was recently reconsidered by this Court in *Pearson v. Callahan*, 129 S. Ct. 808 (2009). Nonetheless, the elements remain the same, and inquiry based on reasonable, good faith efforts on the part of the government.

The Sixth Circuit's decision to depart from the reasonable "good faith" standard is hard to explain in practical application. It demands perfection, and nothing less. It provides a court with substituted judgment, sans context and with 20/20 hindsight. That type of standard is totally unworkable, impractical, and serves no real purpose.

As illustrated by this case, the Sixth Circuit's rule will allow any plaintiff to enter federal court and sue individual officers and municipal governments on an unsubstantiated allegation that is untethered from any actual evidence of bad faith. Here, the evidence in the record indicates that the "lost witness" Burroughs could not identify the officer he allegedly spoke with, nor could he identify any evidence that even suggests that Officer Ingles acted in bad faith. Allowing litigation premised on such limited evidence is an invitation for the criminally accused to storm the courts, resulting in more frequent litigation and a waste of police resources. The end product will not improve police efficacy nor will it provide additional protection for defendants. Such litigation is already a recurring problem.[6] The Sixth Circuit's rule will only magnify this problem.

The Sixth Circuit's decision ignores the reality of cases and circumstances that men and women of law enforcement handle regularly. There was no consideration given to the scope, scale, detail, nuance or

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[6] *See*, Petitioners' Writ of Certiorari, 15-16 n.1.

other variables that may be encountered by law enforcement on any given case. There was no consideration given to the hundreds of circumstances where police may not know or disclose evidence without triggering a constitutional violation, be it judgment, error or otherwise. There was no consideration given for good faith mistakes.

This decision sets an insurmountable standard that is not reasonable and does not result in practical application. Police deal with the real world. The Sixth Circuit's decision does not. The result is a standard that cannot be met and will not produce better law enforcement or a safer society.

This Honorable Court has consistently acknowledged and held that police action should be judged from an "on the scene perspective." *See, e.g.*, *Saucier*, 533 U.S. at 205 (acknowledging the unique reality of law enforcement in the context of a qualified immunity inquiry related to excessive force claims). Qualified immunity is intended to promote the "good faith" efforts of officers who serve on the "front line" and daily face raw, real issues in the performance of their duties.

In cases such as *Saucier*, *supra*, this Court specifically discussed qualified immunity, albeit in the context of a Fourth Amendment excessive force claim. Finding that a military police officer was entitled to qualified immunity, this Court acknowledged "the doctrine of qualified immunity reflects a balance that has been struck 'across the board.'" *Id.*

at 203 (quoting *Anderson v. Creighton*, 483 U.S. 635, 642, 107 S.Ct. 3034 (1987) (citation omitted)). Giving review to the standard for analysis, this Court emphasized an "objective reasonableness standard," and, "the reasonableness of the officer's belief as to the appropriate level of force should be judged from that on the scene perspective." *Id.* at 204-205 (quoting *Graham v. Connor*, 490 U.S. 386, 394-96, 109 S.Ct. 1865 (1989)). Expanding on the nature of the inquiry this Court specifically acknowledged the purpose of qualified immunity in the context of law enforcement as one that is not precise but in fact done with reasonableness and in good faith:

> The qualified immunity inquiry, on the other hand, has a further dimension. The concern of the immunity inquiry is to acknowledge that reasonable mistakes can be made as to the legal constraints on particular police conduct. It is sometimes difficult for an officer to determine how the relevant legal doctrine, here excessive force, will apply to the factual situation the officer confronts. An officer might correctly perceive all the relevant facts, but have a mistaken understanding as to whether a particular amount of force is legal in those circumstances. If the officer's mistake as to what the law requires is reasonable, however, the officer is entitled to the immunity defense.

Id. at 205.

So, too, did the concurring opinions in *Saucier* acknowledge the interest of police. The concurrence held "'The calculus of reasonableness' must follow for the reality that 'police officers are often forced to make split second judgment' about the force a particular situation warrants 'in circumstances that are tense, uncertain, and rapidly evolving.'" *Id.* at 211 (quoting *Graham*, 490 U.S. at 396-97).

This Court considered a related issue in *Arizona v. Youngblood*, 488 U.S. 51, 109 S.Ct. 333 (1988). Considering the context of a criminal investigation and the "failure to preserve evidence" by the police, this Court specifically held:

> We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the polices' obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interest of justice most clearly requires it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the Defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.

Id. at 58.

The analysis of this Court in *Arizona* digs deep to discuss the importance of good or bad faith on the part of law enforcement. It should be noted that in

both *Saucier* and *Arizona*, this Court gives significant analysis to the contexts of the criminal cases, the evidence, the actions of law enforcement and the reasonableness of good or bad faith associated with those circumstances.

These cases have developed a workable, common sense framework for appropriate legal analysis that should be conducted when reviewing law enforcement for qualified immunity. Good faith is the key. Good faith, based on the context of each case, is exactly what we as a society ask for from our men and women on the front lines of law enforcement.

The National Fraternal Order of Police respectfully submits that the Sixth Circuit's decision *subjudice* is a significant, erroneous departure from the "good faith" standard and from this Court's precedent. Moreover, it is a split from the four other circuits that addressed this issue.

The new standard from the Sixth Circuit is a "hindsight is 20/20" rule. It entirely obviates the context, the front line, the case by case differences that characterize actual police work.[7] In our experience, the Sixth Circuit's decision, will not "improve" and, in fact, may radically undermine the work of law

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[7] In *Saucier*, *supra*, this Court warned that "we set out a test that cautioned against the '20/20 vision of hindsight' in favor of difference to the judgment of reasonable officers on the scene." *Saucier*, 533 U.S. at 205 (quoting *Graham*, 490 U.S. at 393-96).

enforcement. Without a good faith component the decision will do nothing but increase litigation and claims, increase associated costs to defend these claims and burden what is already a short staff of law enforcement in most jurisdictions.

It is important to note, the jurisdictions that require a showing of bad faith have allowed cases to proceed to trial. Thus, the bad faith standard does not impose an unreasonable burden on victims of alleged intentional misconduct. Rather, it strikes a reasonable balance between the rights of criminal defendants and the societal demands imposed on police.

The crime will not change. The witnesses will not miraculously tell the truth or immediately confess. Law enforcement will need to become technologically savvy to keep up with new and inventive crimes. There will still be context, differences, motives, accidents and, unfortunately, there will still be errors and oversights.

Still, it is appropriate to balance the public interests presented versus alleged constitutional deprivations. As a society, we ask for police to proceed in good faith and, therefore, we should judge them accordingly. The Sixth Circuit's decision is squarely at odds with real life, real time demands on police officers and, conversely, will not serve to advance better law enforcement. The Sixth Circuit imposes a new and burdensome demand on police officers. Imposing this standard will require that officers make no mistakes. More and more time will be spent

at their substations, headquarters, and with the prosecutors trying to be perfect.

B. This Case Presents an Opportunity for this Honorable Court to Establish a Clear Guideline Prohibiting the *Brady v. Maryland* Standard from Being Imputed to Police Officers.

In *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194 (1963), this Court held "[T]hat the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.* at 87.

Since that time there has been no explicit ruling that *Brady* should be extended to law enforcement. And yet, in addition to eliminating the good faith standard, the Sixth Circuit imputed the *Brady* standard to law enforcement. This is a double-edged sword and a standard that cannot be met.

First, this expansion of *Brady* is an enormous leap that puts the full weight and responsibility of a prosecutor's role on law enforcement. This is in direct contravention of practicality as acknowledged by the various courts that have considered the issue. The role of the prosecutor is that of a guide for the judicial process.

Second, law enforcement does not have that scope, that capacity or that authority. They perform different functions entirely. As noted in *Jean v. Collins*, 221 F.3d 656 (4th Cir. 2000):

> The *Brady* duty is framed by the dictates of the adversary system and the prosecution's legal role therein. Legal terms of art define its bounds and limits. The prosecutor must ask such lawyer's questions as whether an item of evidence has "exculpatory" or "impeachment" value and whether such evidence is "material." It would be inappropriate to charge police with answering these same questions, for their job of gathering evidence is quite different from the prosecution's task of evaluating it. This is especially true because the prosecutor can view the evidence from the perspective of the case as a whole while police officers, who are often involved in only one portion of the case, may lack necessary context. To hold that the contours of the due process duty applicable to the police must be identical to those of the prosecutor's *Brady* duty would thus improperly mandate a one-size-fits-all regime.

Id. at 660.

The police are the front line, the "on the scene," "street level" function of "serve and protect." As discussed at length above, that work is done amidst the variety and chaos of real life, interested persons, witnesses, alibis, evidence and motives. In addition to these distinctions between the roles of a prosecutor

and a police officer, there is one other looming difference: Prosecutors get absolute immunity.

III. CONCLUSION

It should be noted that the Sixth Circuit made no distinction or determination whether the officers engaged in conduct that could be characterized as bad faith, gross negligence, ill will, discriminatory and/or selective prosecution. Indeed there is zero evidence of such bad faith on the part of Officer Ingles. The Court made no determination whether the officers were adequately trained and, if they were adequately trained, whether they followed that training.

Thus, under the Sixth Circuit's rule, any police officer can be hauled into court based merely on an accusation by a witness (or presumably the defendants themselves) that the individual told some officer something possibly exculpatory at some point during the investigation. This sort of standard is far too flimsy and tenuous to justify imposing additional burdens and costs on police officers that will have the sole effect of undermining police efficacy while providing no benefit to potential defendants.

As this Court is well aware, our country is going through one of the most difficult economic crises in our nation's history. The struggling economy has resulted in law enforcement being laid off in record

numbers in cities throughout the country.[8] Police officers are retiring in record numbers. These

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[8] *See*, Mark Hornbeck and Charlie Cain, *Michigan Budget Cuts Hit Police Ranks: Revenue Sharing, 100 Trooper Jobs Among $304M in Cuts by Gov*, Detroit News Lansing Bureau, May 6, 2009 (describing that in Michigan, the governor cut $304 million in the budget in 2009. This budget cut resulted in 100 State Police troopers being laid off "bringing the troop strength to 968, the lowest in at least 40 years." Furthermore, the budget cut reduced "revenue sharing, which pays for police and fire protection and other municipal services. The number of local police officers is down more than 2,000 – or 9 percent – since 2002.")

See, Steve Brandt, *Minneapolis 2010 Budget Trims Police, Civilian Jobs: Minneapolis Adopted a 2010 Budget That Will Put 25 Officers and Recruits, and 30 Civilians, Out of Work*, Star Tribune, Dec. 7, 2009 (stating that in Minneapolis, the City Council adopted a budget to layoff "about a half-dozen cops already on duty and 19 recruits scheduled to hit the streets in a matter of days.")

See, Joe Guillen, *Cleveland Sends Layoff Notices to Safety Forces*, The Plain Dealer, Dec. 23, 2009 (stating that in Cleveland, the safety director "signed [layoff] notices for 67 police patrol officers" and that the notices "would be rescinded if the unions agree to a pay cut of about 4 percent.")

See, Moriah Balingit, *Nine Police Officers May Lose Jobs in North Versailles*, Pittsburgh Post-Gazette, Jan. 8, 2009 (describing that in a city just outside of Pittsburgh, the commissioners proposed a budget that would "result in the layoffs of seven part-time and two full-time officers, reducing the number of officers from five per shift to two.")

See, Bradley Olson, *City's Budget Woes May Mean Furloughs, Layoffs: Mayor Suggests Unions Delay Raises to Help Save Jobs*, Houston Chronicle, Mar. 10, 2010 (providing that the mayor of Houston is considering imposing mandatory furloughs in order to close "roughly $110 million in budget gaps during the next two years." The mayor indicated that the "key to

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economic conditions are leaving our law enforcement community in a very strained situation.[9] Many of the departments are grossly understaffed and others have substantially reduced their forces to critical levels. Overtime is being eliminated. These conditions and the Sixth Circuit's decision can only result in harm to local communities and the entire country. The burden being placed on police officers as a result of this decision is punitive. Thus, this Honorable Court should accept this case and reverse this decision.

The issues presented in this case are of paramount importance to law enforcement, their employers, and the citizens they protect. Obtaining a standard from this Court that employs "good faith"

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negotiations . . . could be the willingness of the city's police . . . union[ ] to offer concessions, such as forgoing salary increases.")

See, Julie Scharper, *Worst-Case City Budget Cuts Police, Fire, Recreation: Rawlings-Blake Says It Shows What Must Be Done if There Are No New Revenues*, The Baltimore Sun, Mar. 25, 2010 (describing that the mayor of Baltimore is also considering cutting police officers. In a budget proposal "to close a $121 million shortfall in the city's $2.2 billion budget," the mayor proposed cutting "120 police officers.")

[9] *See*, Kevin Bohn, *Police Face Cuts as Economy Falters*, Oct. 23, 2008, http://www.cnn.com/2008/CRIME/10/23/police.economy/index.html (stating that "A poll of 200 [police] departments during the summer [of 2008] by the Police Executive Research Forum . . . reported 39 percent of respondents said their operating budgets were cut because of the economy and 43 percent said the faltering economy had affected their ability to deliver services.")

will support the work of law enforcement, support their citizens and acknowledge the appropriately cast responsibility to act in good faith.

Respectfully submitted,

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